

Hearing Date and Time: December 18, 2018 at 10:00 a.m. (Eastern Time)
Objection Date and Time: December 11, 2018 at 4:00 p.m. (Eastern Time)

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE:	*	CHAPTER 11
	*	
SEARS HOLDINGS CORPORATION, <i>et al.</i>	*	CASE NO. 18-23538 (RDD)
	*	
Debtors.¹	*	Jointly Administered

**LIMITED OBJECTION OF AUTOMOTIVE RENTALS, INC. AND ARI FLEET LT
TO SHIP SALE TRANSACTION [ECF DOCS. 450, 775, 833 and 901]**

**To: THE HONORABLE ROBERT D. DRAIN
UNITED STATES BANKRUPTCY JUDGE:**

Automotive Rentals, Inc. and ARI Fleet LT (collectively “**ARI**”), hereby submit this

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings

Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com

limited objection to approval of the sale of Sears Home Improvement Business (the “**SHIP Sale Transaction**”) [ECF Docs. 450, 775, 833 and 901], and in support thereof, state as follows:

BACKGROUND

1. Beginning on October 15, 2018 (the “**Petition Date**”), each of the above-captioned debtors (the “**Debtors**”) filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the Southern District of New York (the “**Court**”).

2. ARI provided, and continues to provide, vehicle leasing and management services, as well as other services related thereto, to Sears Holdings Management Corporation and its Affiliates², including, without limitation, the Debtors pursuant to that certain Master Agreement for Fleet Vehicle Leasing and Maintenance Services dated effective as of December 1, 2009, as amended from time to time (the “**Master Agreement**”), and the Debtors provided, and continue to provide, vehicle maintenance and repair services to ARI.

3. The Master Agreement is both an executory contract and an unexpired lease of personal property, as those terms are used in § 365 and other provisions of the Bankruptcy Code. Approximately 7000 vehicles owned by ARI are leased pursuant to the Master Agreement (the “**Leased Vehicles**”).

LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

The Debtors also include SHC Licensed Business LLC (3718), filed as Case No. 18-23616 and SHC Promotions LLC (9626), filed as Case No. 18-23630 (the “**Additional Debtors**”). The Additional Debtors each filed a motion in their respective chapter 11 case requesting joint administration with the Debtors for procedural purposes only pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure.

² Affiliates is defined in the Master Agreement for Fleet Vehicle Leasing and Maintenance Services dated effective as of December 1, 2009, as amended from time to time.

4. In the SHIP Sale Transaction, the Debtors request entry of an order (the “**SHIP Sale Order**”), pursuant to sections 363 and 365 of the Bankruptcy Code, to sell its home improvement business.

LIMITED OBJECTION

The Debtors Should Be Prohibited from Selling or Transferring the Master Agreement and the Leased Vehicles.

5. The Debtors issued both a Notice of Sale and a Notice of Assumption and Assignment in connection with the SHIP Sale Transaction (ECF Docs. 833 and 901). The ARI Master Lease is not listed in the latter.

6. However, it is not clear whether the Notice of Sale includes any ARI vehicles. The Notice refers back to the Asset Purchase Agreement (“**APA**”) with the Stalking Horse Bidder (ECF Doc. 450, Exhibit B, pp. 86-171). The APA (at Sec. 2.01(m)) includes “Assumed Vehicles” as part of the assets being sold, but it provides no list of those vehicles.

7. Counsel for ARI has reached out to counsel for the Debtors for a clarification on the foregoing, but has not received a response as of the time of filing of this Limited Objection.

8. The SHIP Sale Order should preclude the Debtors from selling or transferring, in whole or in part, the Master Agreement and/or any of the Leased Vehicles. ARI has not been provided notice and a meaningful opportunity to be heard in connection with any such sale, assumption, assignment and/or transfer.

9. Section 365 of the Bankruptcy Code sets forth the procedures for assumption and assignment of executory contracts and unexpired leases of personal property. The SHIP Sale Transaction should not allow the Debtors to circumvent those procedures through the sales process set forth therein without notice to ARI and an opportunity for ARI to be heard in opposition to any proposed sale of its Leased Vehicles or assumption and assignment of its contract rights under the

Master Agreement, in whole or in part. That SHIP Sale Order must preclude any such sale, assumption, assignment or transfer.

WHEREFORE, ARI respectfully requests that this Court enter an Order:

- a. Sustaining this Limited Objection;
- b. Requiring that the form of SHIP Sale Order be consistent with the specific requests set forth herein; and
- c. Granting ARI such other and further relief as the Court deems.

Respectfully submitted, this 11th day of December, 2018.

McGLINCHEY STAFFORD, PLLC

/s/ Richard A. Aguilar

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